



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH
IN THE MATTER OF**

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee:	613952 B.C. Ltd. dba Atlantis Club 1320 Richards Street Vancouver, BC V6B 3G6
Case:	EH05-079
For the Licensee:	Ty Van Truong
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	November 17, 2005
Place of Hearing:	Vancouver
Date of Decision:	November 24, 2005

INTRODUCTION

The Atlantis Club is a liquor primary establishment located in Vancouver and holds Liquor Primary Licence No. 146969. The licence carries a patron capacity of 350. The occupant load certificate allows for 466 persons to be on the premises.

On the business day of February 19, 2005, a Vancouver Police Department member attended at the establishment and issued a Licence Premise Check (LPC) for overcrowding.

The licensee did not dispute that the establishment had more persons than 350 on that occasion, but disputed that the patron capacity was exceeded, the extent of the overcrowding, and accordingly, the size of the penalty recommended by the branch.

There is no issue with respect to occupant load as it was not alleged that the licensee had exceeded that figure.

ALLEGED CONTRAVENTIONS

On the business day of February 19, 2005, the licensee allegedly contravened Section 12(2) of the *Liquor Control and Licensing Act* (the *Act*) and Section 71(2)(b) of the *Regulation* to the *Act* by permitting more patrons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment was less than or equal to the occupant load.

ISSUES(S)

1. Did the establishment exceed its patron capacity on February 19, 2005?
2. If the patron capacity was exceeded, does the extent of the overcrowding require a penalty, and if so what should that penalty be?

EXHIBITS

Exhibit No. 1: Branch's Book of Documents

Exhibit No. 2: Package of materials including letter from doorman, submitted by the Licensee.

EVIDENCE

The branch called a member of the Vancouver Police Department. He testified as follows:

- He received a "call out" to attend at the Atlantis Club because of potential overcrowding issues.
 - He attended with five other uniformed officers at approximately 1:30-1:45 a.m. on February 19, 2005.
 - He approached the doorman at the entrance to the club.
 - The doorman was an individual known to him.
 - He asked the doorman for the door count.
 - The doorman advised that; "We are over".
 - He asked to see the counters and the doorman showed him two counters. One was identified as the "in" count and showed 801, and one was identified as the "out" count and showed 360.
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- He asked the doorman to confirm the patron capacity and the doorman answered "350".
- The manager of the club came to the door and identified himself. The manager admitted that the club was overcrowded but said, "But the police don't normally mind if it is well managed."
- The other officers went inside.
- After about five minutes one of the officers returned and said there was approximately 450-500 persons inside the club.
- The four remaining officers agreed that there were more than 350 persons in the bar, but none had a counter or counted patrons.
- The member did not do a count because he was satisfied with the doorman's count and believed it was substantiated by the other members' estimate of persons inside the club.
- The member issued an LPC for overcrowding beyond patron capacity.

The branch called a Compliance and Enforcement officer (C&E officer). She testified as follows:

- She was informed of the alleged contravention by reason of receipt of the LPC issued by the Vancouver Police Department.
 - The licensee has held this licence since March 2002.
 - The license patron capacity is 350.
 - She issued the Contravention Notice after reviewing the licensee's file and the allegations relating to February 19, 2005.
 - She requested that another C&E officer meet with and interview the doorman.
 - She got a report from the other C&E officer that the doorman did not dispute what he told the police. She took that as a confirmation of the allegations and proceeded with the NOEA.
 - The history of the licensee includes five Contravention Notices for overcrowding, one proven contravention for overcrowding, as well as other
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- contraventions for unrelated matters, and a Compliance Meeting with the branch (at which overcrowding was discussed).
- The employees of the licensee are cooperative when the C&E officers speak to them, but there seems to be no indication of a change in approach to running the club.
 - She identified all of evidence of history in Exhibit No.1 and all of the other tabs in that Exhibit relating to this alleged contravention.

The branch called a second Compliance and Enforcement officer. She testified as follows:

- She met with the doorman as requested.
- He advised her that he always held two counters. One was for people coming in, and one for people going out. The difference between them represented the number of people inside the club.
- He did not specifically remember the night in question but he "does not lie" and if he "told the police it was overcrowded, then it was overcrowded".

The principal shareholder of the licensee testified that he was the operator of the licence (licensee). He testified that the doorman's count was accurate but it included persons involved with a student fashion show and fund raising event that the licensee was sponsoring on that occasion. He testified that persons associated with the fund-raiser were not patrons. They did not drink, did not mingle with the patrons but for selling and displaying fashion, and were not occupying the red lined area. Rather, he testified, they were congregating around the fashion show area in the four rooms outside the red lined area (which are to the right when entering the establishment).

He said that the club was managed well and the patrons were not disorderly or unsafe. He said the staff paid particular attention to not exceeding the published occupant load.

He presented Exhibit No. 2, showing an undated letter from the doorman. The letter states in part that:

I do recall there being a fashion show for that evening. The people involved with the fashion show came early to setup and as I recall I counted approximately 50 people, which was added to my counters. Also as I recalled I counted the staff of the club which was about 50 people and added this number to the counters; this was to ensure that we did not exceed the building capacity of the club.

SUBMISSIONS

Branch

The branch submitted that the doorman's count was accurate, that the count was uncontroverted, and that the establishment's history of overcrowding shows disregard for the rule set by the branch and the legislature.

Licensee

The licensee submitted that he is the controlling mind of the establishment. He said that the night of the allegations was not a "normal night" due to the student fashion show fund raising event scheduled. He claimed that the persons involved in the fashion show were not patrons. He indicated that they were not there to drink, but rather to raise funds. He said that they spent their time near the fashions on display and that occurred out of the red lined areas of the bar in one or more of the rooms adjacent to the bar. The licensee further submitted that the doorman was advised to count all persons entering the establishment carefully in order to ensure that patrons and participants in the fashion show did not exceed occupant load.

The licensee also submitted that if it is found that the patron capacity was exceeded, leniency in penalty should be considered in light of the considerable effort to ensure compliance with occupant load- and therefore safety issues- over the more pedestrian concerns of person capacity.

ANALYSIS AND DECISION

I find that the persons involved in the fashion show/fundraising event were not employees of the licensee. They were not distinguished or separated from the other patrons of the licensee and there was nothing identifying them as other than patrons. There was no evidence that they did not drink nor that they were not served as patrons. Further, there was no evidence that the doorman counted them differently from other patrons entering the establishment. I find that there is no evidence that these individuals avoided the red lined area or did not act as patrons of the licensee. I find therefore, that there was no distinction between these individuals and other patrons of the establishment and therefore they were indeed all patrons.

There was no evidence that the doorman's count was incorrect or that any other count was made. I find the club was occupied by 441 patrons and was therefore well over patron capacity.

The doorman's letter indicates that he counted staff in his count in order to be vigilant about the occupant load. This is contrary to the comments that he made to the C&E officer; that he could not recall the evening in question when he was interviewed, presumably prior to the production of the undated letter (Exhibit No. 2). I note also that when asked about the door count on February 19, 2005, he failed to mention his inclusion of staff while admitting to the Vancouver Police Department member that the club was over its patron capacity

The doorman's letter in Exhibit No. 2 indicated that he counted approximately 50 people associated with the fashion show for that same purpose. I have already found that those associated with the fashion show were patrons. It is therefore, not necessary to decide whether on the evidence, the doorman counted staff (not patrons) in his count, because the count including those associated with the fashion show exceeded the patron capacity significantly with or without staff.

Further, I find that if the doorman did in fact count staff in his count as well as those associated with the fashion show, and if he did not consider those to be patrons, he would have necessarily had to abandon his interest in controlling the number of patrons in the establishment. This is clearly contrary to the intention of the *Act* and *Regulation*.

I find that the contravention has been proven.

PENALTY

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have the discretion to order one or more of the following enforcement actions:

- Impose a suspension of the liquor licence for a period of time
- Cancel a liquor licence
- Impose terms and conditions to a licence or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*.

In light of the history of contraventions both alleged and proven, and the testimony of the witnesses in this proceeding, I find that the licensee is not likely to voluntarily comply with the branch's licensing requirements absent significant penalties for failing to so do.

In a previous case involving a similar allegation against this same licensee (EH05-013), the General Manager said:

The compliance history of this licensee is not impressive, particularly as it applies to overcrowding issues. There was little evidence put forth by the Licensee that any specific steps have been taken to address overcrowding issues, or that the Licensee has responded to the Branch's attempts to bring them in to compliance.

The branch has recommended a six (6) day suspension of the liquor licence. This is the maximum penalty for a second contravention of overcrowding beyond patron capacity, but less than or equal to occupant load, as set out in Schedule 4, Item 14, of the *Regulation*.

I find that the recommended penalty is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 146969 for a period of six (6) days to commence at the close of business on Thursday, December 8, 2005, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*). I direct that Liquor Licence No. 146969 be held by the branch or the Vancouver Police Department, from the close of business on

Thursday, December 8, 2005, until the licensee has demonstrated to the branch's satisfaction that Atlantis Club has been closed for six (6) business days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: November 24, 2005

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch
Attn: Sonja Okada, Branch Advocate
